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July 15, 2003

PROCUREMENT DIRECTIVE NO. 2003-04

TO: All Chief Procurement Officers
All Executive Departments

FROM: Aaron S. Fujioka, Administrator

SUBJECT: Amended Chapter 3-124, Subchapter 6 and Section 3-124-66, Hawaii
Administrative Rules, Interim

This directive issues Chapter 3-124, Subchapter 6 and Section 3-124-66, HAR Interim, effective July 3, 2003.

Chapter 3-124, Subchapter 6 and Section 3-124-66, HAR Interim, will be in effect for no more than eighteen months (December 3, 2004) unless rescinded sooner. During the eighteen month period we will proceed to comply with the requirements of Administrative Directive No. 99-02, Policy and Procedure for the Adoption, Amendment, or Repeal of Administrative rules, dated August 2, 1999.

Standard and Ramseyer versions of Chapter 3-124, Subchapter 6 and Section 3-124-66, HAR Interim, are attached and copies of the standard version may also be downloaded from the SPO website at www.spo.hawaii.gov. Agencies should pen and ink the changes in Chapter 3-124 above the amended section or repealed section and file the interim sections with the summary page in front of the chapter.

Should there be any questions on the rule, please contact me at (808) 587-4700 or your staff may contact Justin Fo at (808) 586-0577.

attachment

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to Chapter 3-124 (Interim)
Hawaii Administrative Rules

June 16, 2003

SUMMARY

1. §§3-124-40 to 3-124-45 are repealed.
2. §3-124-66 is amended.

§3-124-40 REPEALED. [Eff 12/15/95; R 7/3/03
]

§3-124-41 REPEALED. [Eff 12/15/95; R 7/3/03
]

§3-124-42 REPEALED. [Eff 12/15/95; R 7/3/03
]

§3-124-43 REPEALED. [Eff 12/15/95; R 7/3/03
]

§3-124-44 REPEALED. [Eff 12/15/95; R 7/3/03
]

§3-124-45 REPEALED. [Eff 12/15/95; R 7/3/03
]

§3-124-66 Partners in employment program. The state procurement office shall:

- (1) Maintain and post to the internet a current list of participants in the partners in employment program and the goods and services they provide; and
- (2) Ensure that any good or service available from a qualified community rehabilitation program pursuant to this subchapter is not placed on the Hawaii products list under section 103D-1002, HRS. [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; am 7/3/03] (Auth: HRS §§103D-202, 103D-1010) (Imp: HRS §§103D-1010, 103D-1011)"

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to chapter 3-124, Hawaii Administrative Rules, on the Summary Page dated June 16, 2003 were adopted as interim rules at the Procurement Policy Board meeting on June 16, 2003. Pursuant to section 103D-202, HRS, these sections shall be issued by Procurement Directive and be effective for not more than eighteen months.

These interim rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/
PHYLLIS M. KOIKE
Chairperson
Procurement Policy Board

/s/
RUSS K. SAITO
State Comptroller

APPROVED AS TO FORM:

/s/
Deputy Attorney General

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to Chapter 3-124(Interim)
Hawaii Administrative Rules

June 16, 2003

1. Section 3-124-40, Hawaii Administrative Rules, is repealed:

~~["§3-124-40 Purpose. (a) The purpose of these rules is to establish the method of determining preference to in state contractors when awarding a contract for a public works project. The objective is to promote the use of in state contractors.~~

~~(b) This subchapter of chapter 124, subtitle 11 of title 3, Hawaii Administrative Rules, replaces rescinded interim rules subchapter previously adopted on 11/15/01 (file no. 2402)."] [Eff 12/15/95; comp 11/17/97; comp 11/15/01; am and comp 11/25/02; R 7/3/03] (Auth: HRS §103D-202) (Imp: HRS §103D-1007)~~

2. Section 3-124-41, Hawaii Administrative Rules, is repealed:

~~["§3-124-41 Definitions. The following definitions are also applicable to terms used in this chapter:~~

~~"State agency" means any board, commission, department, bureau, division, agency, or political subdivision of the state government, excluding the counties." [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; R 7/3/03](Auth: HRS §103D-202) (Imp: HRS §§103D-1007, 206M-31)~~

3. Section 3-124-42, Hawaii Administrative Rules, is repealed:

~~["§3-124-42 Applicability. (a) These rules shall apply to solicitations issued pursuant to sections 103D-302 and 103D-303, HRS, for public works projects.~~

~~(b) These rules shall not apply:~~

- ~~(1) Whenever the application will disqualify any state agency from receiving federal funds or aid; or~~

~~(2) To the counties.~~

~~(c) The in state contractor preference may not be~~

~~used in combination with any other preference otherwise available under state or federal law."~~] [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; R 7/3/03] (Auth: HRS §103D-202) (Imp: HRS §103D-1007)

4. Section 3-124-43, Hawaii Administrative Rules, is repealed:

~~["§3-124-43 Qualification procedure. (a) Any offeror desiring an in state contractor preference pursuant to chapter 103D, HRS, shall complete an application for a tax clearance and submit it to the State department of taxation for a tax clearance certificate. Upon receipt of the application, the state department of taxation will verify that the applicant has filed all state tax returns, and has paid all amounts owing on such returns for the number of years and for the dollar amounts specified in section 103D-1007, HRS.~~

~~(b) The state department of taxation will issue a tax clearance certificate to the applicant upon its determination that the applicant has filed all state tax returns, and has paid all amounts owing on such returns, in accordance with section 103D-1007, HRS."]~~
[Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; R 7/3/03] (Auth: HRS §103D-202) (Imp: HRS §103D-1007)

5. Section 3-124-44, Hawaii Administrative Rules, is repealed:

~~["§3-124-44 Bidding procedure. Solicitations for public works projects issued by a state purchasing agency and consistent with section 3-124-41, shall:~~

- ~~(1) State that a price preference will be given to in state contractors subject to the directions in the solicitation on applicability, qualification procedures, and limitations of the in state contractor preference;~~
- ~~(2) Provide an appropriate space for the offeror to indicate whether the in state preference is selected by the offeror;~~
- ~~(3) State that if the in state contractor preference is selected, the price preference percentage, as provided in section 103D-1007, HRS, shall be used for price evaluation, as specified in section 3-124-45;~~
- ~~(4) State that the in state preference may not be used in combination with any other preference~~

~~available under state or federal law and that the selection of the in state contractor preference takes precedence over the selection of any other preference and all other selections will be ignored by the procuring agency; and~~

- (5) ~~Require the offeror requesting an in state contractor preference to submit with the offer an tax clearance certificate obtained in accordance with section 3-124-43 and shall caution the offeror that failure to submit the tax clearance certificate automatically voids the selection of the in state contractor preference.~~"] [Eff 12/15/95; am and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; R 7/3/03] (Auth: HRS §103D-202) (Imp HRS §103D-1007)

6. Section 3-124-45, Hawaii Administrative Rules, is repealed:

~~["§3-124-45 Evaluation procedure and contract award. (a) When the in state contractor preference is not selected by an offeror, the offer shall be evaluated by applying all preferences selected by the offeror which are allowed by statute. Calculations for adjustments shall be based upon the original price offered. Should more than one preference apply, the evaluated price shall be the sum of the original price plus applicable preference adjustments.~~

~~(b) Whenever an offeror selects and qualifies for the in state contractor preference, the prices offered by those not selecting or qualifying for the in state contractor preference shall be increased by the percentage allowed in section 103D-1007, HRS, for evaluation purposes.~~

~~(c) The responsible and responsive offeror submitting the offer with the lowest evaluated price shall be awarded the contract.~~

~~(d) For offers submitted pursuant to 103D-302 and after taking into consideration all applicable preferences, the contract amount shall be the original price offered.~~

~~(e) Should the price comparison result in identical evaluated prices, and the tied bidders meet the provisions of section 3-124-43, the procurement officer shall select the winning bid resulting from an invitation for bids, pursuant to section 3-122-34.~~

~~(f) For proposals submitted pursuant to section 103D-303, HRS, and after taking into consideration all applicable preferences, the procurement officer shall~~

~~award the contract pursuant to section 3-122-57."~~]
[Eff 12/15/95; am and comp 11/17/97; am and comp
11/15/01; am and comp 11/25/02; R 7/3/03]
(Auth: HRS §103D-202) (Imp: HRS §103D-1007)

7. Section 3-124-66, Hawaii Administrative Rules, is amended to read as follows:

"§3-124-66 Partners in employment program. The state procurement office shall:

- (1) Maintain and post to the internet a current list of [~~partners in employment program providers with descriptions for~~] participants in the partners in employment program and the goods [~~or~~] and services [~~that have been determined by the department to meet that department's criteria and annually distribute the list to all state and county purchasing agencies;~~ they provide; and
- (2) Ensure that any good or service available from a qualified community rehabilitation program pursuant to this subchapter is not placed on the Hawaii products list under section 103D-1002, HRS." [Eff and comp 11/17/97; am and comp 11/15/01; am and comp 11/25/02; am 7/3/03] (Auth: HRS §§103D-202, 103D-1010) (Imp: HRS §§103D-1010, 103D-1011)"

8. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

9. Additions to update source notes to reflect these amendments are not underscored.

10. These amendments to chapter 3-124, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted as interim rules on June 16, 2003, and filed with the Office of the Lieutenant Governor.

/s/_____

PHYLLIS M. KOIKE
Chairperson
Procurement Policy Board

/s/
RUSS K. SAITO
State Comptroller

APPROVED AS TO FORM:

/s/
Deputy Attorney General